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MISCELLANEOUS.

The State vs. Phineas H. Johnson.

The Court of Appeals have refused to grant a new trial in the case of the State vs. Phineas H. Johnson, for murder. We publish below the sentence of the Court, as delivered by Judge O'Neill, in Columbia, on Monday, the 15th of December last.

Phineas Johnson: Young man, how can I say to you, in the awful language of the inspired prophet, "set thy house in order, for thou shalt die, and not live!" Yet it must be done. You are before me now, in the morning of life—in a few brief days you will be cut off, and the place which now knows you, shall know you no more forever. It is my duty to say to you, that the nature of your crime forbids the possibility of pardon here. Your only hope of pardon is in the merciful atonement offered for you and all men, in the broken body and streaming blood of Him who cried, "father forgive them, for they know not what they do."

Your crime, awful as it is, must be set before you, in the hope that it may do you, and the community good. To creep upon a poor woman, in her own solitary cabin, in the stillness of night, with her nursing at her feet, her first-born, wrapt in infantile innocent slumber by her side, when her hands were preparing the scanty portion of vegetables for her and her food, and to shoot her as a wild beast, hardly has a parallel in the annals of crime. When to this is added, the guilty wretch who committed this deed was her seducer, the father of her little ones—where, oh where shall we find another as foul a blot on humanity!

You, at least, her person ought to have been sacred. For you, she had made herself a prey, degraded being, to whom beauty was a reproach, character was infamy, and affection was hatred. For you, she had left a father's house and plenty, and had become a dependant on almost charity, for food and covering. To you, she had given the pledges of her love, in the starving, degraded children around her! How could you, young man, slay her, who had thus given her all to you? How could you level your gun at the head which had often been pillowed in guilty affection upon your bosom? Remember, I beg you to remember, that her blood will sink you forever into everlasting torments, unless you can feel that mercy, your Saviour's dying mercy, has removed the guilty weight of it from your soul.

It is necessary, too, young man, for your own sake and that of the section of the country (Pea Ridge, of Union District,) from which you came that it should be said, I fear your crime is the consequence of the gross immorality and vice which has too much there abounded. Female virtue has there, I am told, lost its appropriate value. Seduction is not regarded as a crime; and concubinage is not at all rare or disgraceful. Will you not, as you approach the gallows, say with me, shame upon such a state of things! You will be, most probably, the first white man hanged in Union District; and fearful will be the commentary of your fate, upon such a state of morals.

Is it true, that you and the deceased once were members of the same religious community? Can it be, that you forgot that the weak and feeble being by your side, was your sister in the house of your Master, and that violating her confidence, you snatched a crown of peace from her head, to place upon it one of shame! Oh! if these things be so, think upon them—ponder them night and day, for they demand a fearful reckoning and account.

From you I turn, and with me I hope you will in thought also go, to the house of your parents. What is there? Peace! No! oh! no! I can, in imagination, hear your young wife frantically asking to be allowed to share your prison solitude; your mother, like Rachel, weeping for her children, and would not be comforted, for they were not; your father, once respectable, now broken down, and lamenting like David, for Absalom. Oh, my son, would to God that I had died for thee! Who has caused this scene of mourning? Must I say, guilty young man, "thou art the man!"

Sad and awful as all these thoughts and reminiscences may be,

they are as nothing to that which is before you! Death, a shameful death, in a few days, must be met and suffered. Oh, young man, do not die forever.

God is before you, as he ever has been, willing to be gracious. He still points you to the atonement offered on Calvary. He still says, "wash and be clean."

I have no doubt that, although a murderer, like Massey, you may yet have hope of pardon and peace. I have heard with great pleasure, that you have, as you believe, experienced already that hope.

Be not deceived! Wrestle continually, like good old Jacob with the angel of the covenant, and say like him, "I will not let thee go, till thou bless me."

May you have that blessing! May God pass you through the dark valley of the shadow of death, and enable you to say, "I will fear no ill, for thy rod and thy staff doth support me."

The sentence of the law is, that you be taken hence to the jail from which you last came, thence to the jail of Union District; that you there be safely and securely confined till Friday, the 13th day of February next, on which day between the hours of 10 in the forenoon and 2 in the afternoon, you will be taken by the sheriff of Union District to the place of public execution, and there be hanged by the neck, till your body be dead, and may God have mercy on your soul!

Social Intercourse.—It should make it a principle to extend the hand of fellowship to every man who discharges faithfully his duties, and maintains good order—who manifests a deep interest in the welfare of general society—whose deportment is upright and whose mind is intelligent, without stopping to ascertain whether he swings a hammer or draws a thread. There is nothing so distant from all natural claims, as the reluctant, the backward sympathy—the forced smile—the checked conversation—the hesitating compliance, the will of one to try to manifest to those a little down, with whom in comparison of intellect and principles of virtue, they frequently sink into insignificance.—Daniel Webster.

A FINE EAR FOR MUSIC.—Two Irishmen in crossing a field not a hundred miles from this place, came in contact with a jack, who was making "day-light hideous" with his unearthly howling. Jimmy stood a moment in astonishment, but turning to Pat, who seemed as much enraptured with the song as himself, remarked, "It's a fine large ear that bird has for music," Pat, "but sure he's got a wonderful cowl."

CRITICIZED POET.—An indifferent poet, who had been severely handled by the critics, yet continued to go on publishing his crudities, said one day to an acquaintance, that he had found out a way to be revenged of his reviewers, and that was by laughing at them. "Do you so?" said the other; "then let me tell you, you lead the merriest life of any man in Christendom."

A CUTTING RETORT.—After the younger Mr. Pitt had made his speech in the House of Commons, Sir Robert Walpole, in a sarcastic note, remarked:

"I apprehend the young gentleman has not sown all his wild oats; to which Mr. Pitt replied, in rejoinder: "Age has its privileges, and youth may have its faults; but the gentleman affords ample illustration that I still retain food enough for geese to peck at."

SECESSION AND ANNEXATION.—A citizen of Licking, county Ohio, lately had two daughters to elope from his house on one day. One went off with her lover, and while her father pursued her, the other went also. Both succeeded in getting married.

A gentleman at an eating house asked the person next to him if he would please to pass the mustard. "Sir," said the man, "do you mistake me for a waiter?" "Oh, no sir," was the reply, "I mistook you for a gentleman."

It is said that General George Washington drew his last breath in the last hour of the last week of the last month of the last year in the last century. He died on Saturday night at 12 o'clock, Dec. 31, 1799.

POLITICAL.

Speech of Mr. Butler.

OF SOUTH-CAROLINA.

In the Senate, Monday, Dec. 15, 1851, on the Resolution offered by Mr. Foote, re-affirming the Compromise Measures.

The Senate proceeded to the consideration of the following Resolution:

A Resolution declaring the Measures of Adjustment to be a definitive settlement of the question growing out of domestic slavery.

Be it enacted, That the series of measures embraced in the acts entitled 'An act proposing to the State of Texas the establishment of her Northern and Western boundaries, the relinquishment by the said State, of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States, and to establish a territorial government for New Mexico,' approved Sept. 9, 1850; 'An Act for the admission of the State of California into the Union,' approved Sept. 9, 1850; 'An act to establish a territorial government for Utah,' approved Sept. 9, 1850; 'An act to amend and supplement to an act entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters,' approved Feb. 12, 1793,' approved Sept. 18, 1850; and 'An act to suppress the slave trade in the District of Columbia,' approved Sept. 20, 1850, commonly known as the 'Compromise Acts,' are, in the judgment of this body, entitled to be recognized as a definitive adjustment and settlement of the distracting questions growing out of the system of domestic slavery, and as such, that said measures should be acquiesced in and faithfully observed by all good citizens.

Mr. Butler. Mr. President, I am very sorry that this debate has been suspended, because, what I would have said last week would have been said in a very words, and distinctly in reference to the topic before me. To resume and continue the debate now will not obviate the incidental injustice to myself and others, occasioned by so long a suspension. I went into the debate last Monday morning unexpectedly; that is to say, I spoke from information acquired only the day before. I had not seen any of the notices in the newspapers of the honorable Senator's resolution. I had not learned that they had been proposed in the Democratic caucus. Although, in some measure, I might have spoken from information thus acquired, my remarks were made mainly from views which I took of the subject whilst hearing the honorable Senator from Mississippi.

While I denounced his proposition as a mode of ratification of the compromise to which I had been opposed, I said not one single word, I made not a single allusion to his own State, or to himself, except, perhaps, of a political character, and that rather by implication than by any distinct expression. He was pleased to say I had come into the debate inopercitely. I came into it, however, with nothing like *audacia proposita*. I soon learned that I was contending with one who was conducting his movements with the concert and skill of political tacticians. But even regarding him as an organ confining himself to the views and purposes of himself and others, I might have felt little inclination or desire to continue and widen the debate. When, however, the gentleman enlarged the scope and aim of his remarks, and gave them such a direction that they could not escape me and others; and when he made allusions under a degree of excitement and passion for which I was not prepared, I had no alternative left but to make a rejoinder. They are allusions and remarks which cannot escape myself, in connection with the measures he has brought up for ratification, as a representative of the State of South-Carolina. He knows as well as any man upon this floor, how painful it is to me to have any thing like an occasion to participate in a debate of this kind. There are incidents in our lives which he knows very well make this painful to me. I must, however, discharge my duty, and I hope I shall do so in such a manner that, whilst I may show to the gentleman that he who lives in a glass-house should not throw stones,

I may also endeavor to vindicate myself from some of the allusions and remarks which were intended to reach me. When I saw the gentleman, with so much deliberation, draw from his quiver arrows that had been laid aside for a contest for which I was not prepared, I confess that I then looked with surprise, as well as concern, upon the course which the debate was likely to take.

If the gentleman had satisfied himself with simply avowing that he intended to put the seal of approbation upon the compromise measures, I might not have had cause to complain so much. If he had contented himself with being entirely silent as regards the effect which his resolution would have upon those who opposed it, I might not, perhaps, have been altogether satisfied, but I would not have taken material exceptions. But he went much further, and not only bestowed applause and commendation upon the cherished compromise measures, but turned round and fired on the camp of his former comrades.

My duty to that camp, deserted as it has been, requires me to vindicate its history and the conduct of those who are connected with it. Under the cover of the proposition now before the Senate, there seems to be a double aim—to make a new platform for the security of some, and to expose others who are not willing to be forced from their original position; and this, too, in a manner unprecedented in the legislative history of this country, or any other. It is a mode of ratification of what is regarded as a popular measure by certain politicians—of course not so much for their own advantage as for the good of the whole country—not to give up to posterity what is meant for mankind. I may take a different view of the matter. Instead of quieting agitation and restoring harmony, this proceeding will sow the seeds of discord among those who have a common interest to defend the rights of the States, especially the Southern States, which are alone in danger, and which must be doomed if their true friends suffer party organizations to divide and destroy them. This measure is to be an ark for the elect of the land to be saved from the great deluge that may be coming over us. I suppose politicians will go into it by pairs, of different kinds, to make an improvement by amalgamation—as Mr. Burke said of similar class, a mosaic-work, there a black piece, and there a red one, &c. The benevolent plan is to put to the sword all who are to be excluded from the ark, or who cannot be admitted into it by a party passport.

I know that the honorable Senator said that his resolution originated in an enlarged patriotism, having no reference to party tactics. Sir, I have always remarked, that when patriotism becomes so diffused and enlarged, it becomes rather weaker than stronger. I did not know what the honorable Senator was aiming at, but as I said then, I knew what the effect would be. Now, before I allude to or notice some remarks which special claim my attention, I will dispose, by way of explanation, of some of the charges, by or complaints perhaps I should say, which he made against those who had charge of the fugitive slave bill. He intimated that they did not do their duty to it. Perhaps the charge was not made so strongly as to accuse them of bad faith in relation to it, but it was something like it.

Mr. Foote, of Mississippi. I expressly disclaimed it.

Mr. Butler. The charge was that they had not brought forward the bill with that promptness, and urged it upon the consideration of the Senate with the energy, which the occasion, in the opinion of the gentleman, and some of his special friends called for. I made an explanation in reference to the bill once before. It was at the last session of the last Congress called up at an early day, and I made my speech upon it as the chairman of the committee; and my friend from Virginia [Mr. Mason] had also made a speech upon it, when the late Senator from New Jersey [Mr. Dayton] having the floor, the whole discussion was suspended, to give the Senator from Kentucky [Mr. Clay] an opportunity of bringing before the Senate his measures of com-

promise. No objection was then made to letting the bill drop for awhile; but before the Committee of Thirteen had matured and disposed of their work, I suppose the suggestion was made to bring up the fugitive slave bill as a separate measure. Perhaps it was intended to make it a test in advance. Some of us who had charge of the bill might not have been inclined to yield too readily to the suggestions of those in whose course of policy we did not exactly agree, or there may have been a fair difference of opinion as to the mode of using the fugitive slave bill. But when the bill was brought up under the suggestion of the honorable gentleman, and with the understanding that his Northern friends and allies would support it, how many of them voted for it? The two gentlemen from Iowa [Messrs. Dodge and Jones] voted for the bill, and the honorable gentleman from Pennsylvania, no longer a member of this body, [Mr. Sturgeon] voted for the bill. The honorable gentleman from New York, [Mr. Dickinson] no longer here, would have voted for it, and explained at the time the reasons why he did not, having paired off with his colleague. There were but three Northern Senators who voted for it. Let the country understand now, for the first time, if it never has been understood before, why honorable gentlemen from the North, who are now so vehement upon the subject of these compromises, did not vote on that bill, either for or against it. When the compromise measures have swum to the shore, there are some willing to stretch out the hand of aid, but were unwilling to run the hazard of the flood when it was uncertain as to the fate of the bill referred to. Did they avoid that vote, or were they absent by accident when the vote was taken?

Some of those gentlemen, I know, gave their moral support to the bill; but I state the fact, that it was not until the bill had gone to the country, and obtained its favorable judgment, as they suppose, that some gentlemen became its open advocates. So much for that.

Now for another complaint and charge, which the honorable Senator has made, which may apply to myself, that is, denying the President power to enforce the law. I beg to bring to the attention of the Senate the report which I submitted in relation to the President's message, calling for additional legislation to enable him to enforce the fugitive slave law.

Mr. Foote, of Mississippi. I thought that I was distinctly understood by the whole Senate in stating that I had no allusion to the honorable Senator in connection with this matter. I recollected his report, and I have had occasion to read it in my own State in language of commendation. He expresses some opinions in the report in which I do not entirely concur. But I was exceedingly struck with a portion of the language used in the report, expressing confidence in the disposition of the Executive to perform his duty faithfully in executing the powers vested in him on this important subject.

Mr. Butler. I wish to have the report read, not so much for any vindication of myself as that the Senate may understand my views.

The Secretary read the report, as follows:

"In submitting my views on the message of the President referred to the Judiciary Committee, it is not my purpose to express my dissent from the general and unqualified conclusion of the majority of the committee, to-wit: that it is necessary at this time, by further legislation, to give the President power over the militia and military forces of the Government, for the purpose of suppressing insurrections and combination to obstruct the execution of the laws.

"There are some subjects of the message presented to the consideration of Congress, and which address themselves specially to the committee, upon which I feel it a duty to express an opinion, lest by silence there might be a tacit recognition of one of the assumptions and an approbation of some of the recommendations of the message.

"Previously to the act of 1807, it seems to have been the implied understanding of all the departments of

the Government that the President was confined to the militia, to suppress insurrections against the State government, and to suppress combinations against the laws of the United States.

"The act of 1795 indicates the occasions and prescribes the manner in which the militia shall be called out and employed. The President cannot order out the militia to suppress insurrection against the State government, without being called on to do so by the legislative or executive authority of the State concerned.

"To suppress combinations against the laws of the United States, it is the duty of the President to judge of the occasion for calling out and employing the militia, it was made the duty, by the act referred to, to issue his proclamation as a previous warning to the employment of force.

"This provision was founded in usage, and has had the sanction of time, trial, and experience. It is but the warning voice of a forbearing Government. There might be some occasions when the interval between such warning and the actual employment of force might be of some duration. Other occasions might be such as to require the force to follow in quick succession to the warning of a proclamation. The order to call out the militia and the proclamation might emanate at the same time.

"It seems to have been in contemplation by the act of 1795 to put at the disposal of the President a *quasi military posse comitatus* of citizen soldiers, to maintain the dominion of the laws, in which they had the interest of citizens. It was to make use of one class of citizens to bring another to a sense of justice and a proper submission to the law, I approve its wisdom. An insurrection would be much more easily quelled by a display of the military force of citizens, than by the employment of a trained and organized army, whose only influence would be the employment of force. An overwhelming force might be employed in the first case, whilst the other might only be strong enough to provoke collision, and end in blood. Whatever might be the views of our ancestors, it is certain that until 1807 the militia was the only force put at the disposal of the President to suppress insurrection, &c.

"The act of 1807 is in these words: 'That in cases of insurrection or obstruction to the laws either of the United States or of any individual State or Territory, where it is lawful for the President of the United States to call forth the militia for suppressing such insurrection or causing the laws to be duly executed, it shall be lawful for him to employ for the same purpose such part of the land and naval force as shall be necessary, having first observed all the prerequisites of the law in that respect.'

"So far as it regards the employment of the army and naval force, the President maintains that he is subject to no prerequisites of the acts referred to, but that they are absolutely at his command for the purposes indicated.

"The words of the President are: 'Congress, not probably advertent to the difference between the militia and the regular army by the act of March 3, 1807, authorized the President to use the land and naval forces of the United States for the same purposes for which he might call forth the militia, and subject to the same proclamation.' But the power of the President under the Constitution as commander of the army and navy is general, and his duty to see the laws executed is general and positive; and the act of 1807 ought not to be construed as evincing any disposition in Congress to limit or restrain any of his constitutional authority."

"The import of which is, that the President may use the Army and Navy as he may think proper, under the plenitude of his constitutional authority, and that he is not constrained by the act of 1807, nor can he be restrained by any act of Congress.—Being ex officio commander, he can use the Army in suppressing insurrections in a manner different from that in which he is required to use the militia."

"For the specific and sometimes delicate purposes indicated, I think Congress has the direction of the President. When actually in command for repelling invasion or for any other purpose, to must exercise his own judgment under his constitutional discretion. 'In one sentence I deny that the President has a right to employ the Army and Navy for suppressing insurrection, &c., without observing the same prerequisites prescribed for him in calling out the militia for the same purpose as that which is required in his message, is

that he shall have a right to employ the militia, as he contends, he has a right under the Constitution to employ the regular military force—that is, without notice of a proclamation. I do not think he has the right to call out the military force of the Government without observing the prerequisites of the act of 1795, and I am unwilling to give him such power in calling out the militia. I would regard it as a fearful momentous occasion to see the Army called out to shoot down insurgents without notice or proclamation.

"The truth is, it might be regarded as a significant omen of the times to be told that a marshal, under his plenary power to call out the *posse comitatus*, cannot execute constitutional laws without resort to force, and that to be executed with the promptness of executive will."

"Justice and the occasion require me to say, that I do not believe the power contended for would be abused by the present Executive. The precedent for the direction of a mild and just President may be the rod of power for a military despot.

Feb. 28, 1851. A. P. BUTLER.

Mr. Butler. Mr. President, this report did not materially differ from the report of the minority. I have seen it adverted to by the newspapers, and generally, I think, the report has been approved. If I had been influenced by feelings of sectional resentment, I might have been tempted to yield to the President's demands. The import of his message was, that he should be allowed not only to use the regular army, without proclamation, in putting down insurrections and bodies of men too formidable to be overcome by the ordinary *posse comitatus* of the country, but he required that there should be an armed militia at the disposal of his marshals, with bayonets and balls, who should put down those formidable bodies of men, without warning them, without having the riot red to them at all. I did not agree to any such suggestion. I recollect under the influence of the highly eloquent appeal made from Kentucky, that the honorable Sen-

I made no allusion to the precedent as a means to overcome the liberties and institutions of the country. I say now, that if the fugitive slave law is to be enforced by the bayonet, by an armed *posse comitatus*, put at the disposal of the Executive, it is an evidence that it is a law which will not be enforced at all. I believe that it will not, I believe that it has not been enforced. And in this Republic, when it is necessary that the bayonet should be used instead of voluntary submission to the dominion of the law by the citizens themselves, or by the ordinary force which can be evoked on the occasion to carry it into effect, it is a significant omen, and indicative of the times.

Why I read of these riots and these combinations being denounced as treason. I did not believe at the time, that they would be construed so as to amount to treason against the United States. Whatever might be their real character, such would not be their complexion in the courts. The character of such meetings will depend more on the testimony of witnesses than the truth of facts, and no authority can over-ride such influences. We have a great many rhetorical declamations in this Senate; and if the advertisements which go out from there were to indicate anything like the truth, there would be very little difficulty in carrying out the provisions of the Constitution. But the Constitution is a dead letter. United States courts have no jurisdiction over the subject, for it is not regarded as treason. It is referred to the State courts. What will be the result? The State courts take jurisdiction of this resistance of the fugitive slave law as of an ordinary riot or murder. Who are to decide upon the crime? A jury composed, perhaps, of those who sympathize with the person charged. Who is to award the punishment? The judge, who, perhaps, entertains the same feelings, and judges in the same sympathies. Or, if a tribunal of honor, which I never expect to see, were enough, in defiance of public opinion, to do justice, under the sanction of an oath, to the obligations of the Constitution, the sentence would be remitted by the Executive of almost any one of the non-slaveholding States."

Gentlemen preach to me eternally that this fugitive slave law will be executed, when every newspaper brings a refutation of the assertion. Have we not arrived at an eventful period in the history of the country? When I see that, by combinations, by con-